



Bankruptcy Clerk's Newsletter

Volume II
August 2000

BANKRUPTCY CLERK'S OFFICE ONLINE

The staff of the Bankruptcy Clerks office will offer two workshops for attorneys, trustees and their support staff in September. The workshops will include an overview of our web site, a demonstration of PACER On-Line, RACER and our local decision retrieval system.

The workshops have been approved for 3.00 North Dakota CLE hours.

The Fargo session will be on Wednesday, September 13, 2000 in the Jury Assembly Room of the Quentin N. Burdick U.S. Courthouse from 8:30 to 12 noon. The Bismarck workshop will be on Tuesday, September 19, 2000 at the Radisson Hotel and Conference Center from 1:00 to 4:30 p.m. The Fargo session will include an open lab after the workshop for additional hands-on training.

Register by e-mail at RSVP@ndb.uscourts.gov, by fax at 701-297-7105, or mail to Clerk, U.S. Bankruptcy Court, Quentin N. Burdick U.S. Courthouse, 655 First Avenue North, Suite 210, Fargo, North Dakota 58102-4932. We need the name of the law firm, the number attending and whether attendance will be in Fargo or Bismarck. There is no charge.

This should be an exciting workshop as we will show you what's available now, and we'll talk about what we think the future will bring. The workshop will be presented by systems and operation staff.

MODIFICATIONS OF PLANS

Section 1127 of Chapter 11, Section 1223 and 1229 of Chapter 12, Sections 1323 and 1329 of Chapter 13 all provide for modifications of plans both before and after confirmation. Bankruptcy Rule 2002 requires that all creditors receive a 20 day notice of the time fixed to accept or reject a proposed plan modification. Bankruptcy Rules 3015 and 3019 are instructions for modifications.

Frequently stipulations are filed which resolve routine matters, and buried in the stipulation is a statement that the stipulated terms modify a plan. For example, a stipulation may resolve a pending motion for dismissal. The stipulation may state that the underlying debt owed the creditor has been renegotiated and thus the stipulation modifies the plan. The record (docket) will read that a motion to dismiss was filed and the motion was subsequently resolved by a stipulation. The long term effect, however, is that a debt between the debtor and creditor was renegotiated and the plan was modified.

We are concerned that years from now property titles may be clouded if we don't have a very clear record of what actually transpired between debtors and creditors while in bankruptcy court. Every year we receive inquiries from frustrated families, attorneys and title examiners trying to determine how real estate exchanged hands in the bankruptcy courts in the 1920's through the 1980's. We didn't have good record keeping abilities in the first half of the last century and searches going back that far are nearly impossible. Searches for the last half of the century may be more successful, but only when we have all the appropriate information on file.

We are making every attempt to note the plan modifications on the docket, but we ask your assistance in using the appropriate code sections and rules as well as document headings to pursue plan modifications.

CHAPTER 12

As of this writing, there have been no updates to the Chapter 12 legislation. We check www.abiworld.org from time to time for bankruptcy news.

OFFICIAL PAPER SIZE

Pleadings in federal court files are to be on standard sized paper 8 ½ by 11. We are currently imaging all pleadings submitted in cases filed from January 1, 1999 and forward. Documents that are submitted on legal sized paper must first be reduced in order to be scanned into the system. The scanners and the program are calibrated to read 8 ½ by 11 paper. We ask that you assist us by submitting your documents, attachments and exhibits on 8 ½ by 11 paper.

ORDERS AUTOMATICALLY STAYED

For nearly a year we have included short notices on orders reminding parties that Bankruptcy Rules 3020, 4001(a)(3), 6004(g) and 6006(d) stay for ten (10) days the following orders:

- ! confirming Chapter 11 plans;
- ! granting relief from stay;
- ! authorizing the use, sale or lease of property other than cash collateral;
- ! assigning an executory contract or unexpired lease.

unless provided for in the body of the order.

We will soon discontinue this type of reminder.

MAILING UPDATE

Local Rule 1007-1 requires that a master address list (matrix) listing the name and address of all creditors and interested parties be filed with the bankruptcy petition. The matrix is used as the official mailing list to enable the clerk to comply with general noticing requirements.

The Bankruptcy Noticing Center (aka Tracor and EDI) is performing this service to the Judiciary at a substantially reduced cost to the tax payers. To receive this discount the Post Office has mandated the BNC to use appropriate zip codes. Without correct zip codes important notices will be delayed to your clients and creditors.

We enlist your help in submitting correct and complete zip codes. If your office should need any information, the local post offices will help you with zip code lists or books.

PLEASE COMMENT

What would you like to see in the clerk's newsletter? Let us know and we'll try to be responsive.

MOVE NOTICE

On Friday, August 25, 2000, the St. Louis clerk's office of the United States Court of Appeals for the Eighth Circuit and the clerk's office of the Eighth Circuit Bankruptcy Appellate Panel are moving.

Effective Monday, August 28, 2000, the addresses will be:

U.S. Court of Appeals for the Eighth Circuit
Clerk's Office
Thomas F. Eagleton Court House
Room 24.329
111 S. 10th Street
St. Louis, Missouri 63102

Bankruptcy Appellate Panel for the Eighth Circuit
Clerk's Office
Thomas F. Eagleton Court House
Room 24.306
111 S. 10th Street
St. Louis, Missouri 63102

Effective Monday, August 28, 2000, the phone numbers are:

Eighth Circuit Clerk: 314-244-2400
Bankruptcy Appellate Panel: 314-244-2430

The United States Postal Service will forward their mail, but they ask that you use the new addresses on any correspondence you send to them after August 25, 2000.

The clerk's offices will be open without interruption on Friday, August 25 and Monday, August 28, and normal business hours will be observed on both days.

Questions? Call 314-539-3600.

Bankruptcy Reform Legislation Stalled

Congress failed to pass a compromise bankruptcy reform bill before it adjourned for the summer recess. It is very uncertain whether a compromise will be reached that will allow the bill's passage when Congress returns in September.

The House passed its version of the bill back on May 5, 1999, and the Senate passed its version on February 2, 2000. Since that time, the two bodies have tried unsuccessfully to resolve differences in the two versions of the bill. Major sticking points include an amendment that would make damage caused during abortion clinic violence nondischargeable, an increase in the minimum wage, and a cap on the homestead exemption. The White House has threatened to veto the bills in their present form, although it does favor the Senate version over that of the House.

The bills make bankruptcy a "needs-based" system that would force some debtors into Chapter 13 if they have an ability to pay some of their debts over five years. The bills also give creditors new tools to challenge abusive filings, and require more information from debtors. The legislation makes some unsecured credit card debts nondischargeable, and limits debtors' rights to write down the payment on secured loans to the value of the underlying collateral. Other provisions require all debtors to undergo credit counseling before filing, and to complete a debtor education program before receiving a discharge.

The bill would also make Chapter 12 a permanent part of the bankruptcy code. Although there does not seem to be opposition to this part of the bill, it is hung up with the rest of it. As a stop gap measure, on June 22, 2000, Representatives Smith and Gekas introduced a resolution to extend Chapter 12 until October 1, 2000. However, the bill was referred to the Committee on the Judiciary, where it remains.

Much of the impetus for bankruptcy reform has died off with the nation-wide decrease in the number of bankruptcy case filings. It appears doubtful whether the Congress will pass this legislation this year, if at all.

North Dakota Bankruptcy Statistics for Six Month Period Ending June 30, 2000

	<u>1999</u>	<u>2000</u>	<u>Change</u>
Cases	1118	998	-11%
Estates	1582	1395	-12%
Joint Cases	464	397	-14%
Business Cases	60	41	-32%
Chapter 7 Cases	1048	954	- 9%
Chapter 11 Cases	1	3	200%
Chapter 12 Cases	24	5	-79%
Chapter 13 Cases	45	36	-20%
Farm Related Cases	24	5	-79%
Adversary Proceedings	53	38	-28%